the respondents, so far as the laws of the state are concerned, is a vested right acquired under those laws and so is one expressly saved by § 27 from destruction or appropriation by licensees without compensation, and that it is one which petitioner, by acceptance of the license under the provisions of § 6, must be deemed to have agreed to recognize and protect. Whether § 21, giving to licensees the power of eminent domain, confers on them power to condemn rights such as those of respondents, and whether it might have been invoked by the petitioner in the present situation, are questions not before us.

Affirmed.

OHIO EX REL. POPOVICI, VICE-CONSUL OF ROUMANIA, *v.* AGLER ET AL.

CERTIORARI TO THE SUPREME COURT OF OHIO.

No. 35. Argued January 7, 8, 1930.—Decided January 20, 1930.

1. The provisions of Article III, § 2, of the Constitution extending the judicial power to all cases affecting ambassadors, other public ministers and consuls, and investing this Court with original jurisdiction of such cases, do not, of themselves and without more, exclude jurisdiction in the courts of a State over a suit against a vice-consul for divorce and alimony. P. 382.
2. The provisions of the Judicial Code, § 24, par. Eighteenth; § 256, par. Eighth, giving the District Court original jurisdiction, exclusive of the courts of the several States, over all suits against consuls and vice-consuls, should not be construed as granting to the District Court or denying to the state courts, jurisdiction over suits for divorce and alimony. P. 383.

119 Ohio St. 484, affirmed.

CERTIORARI, 279 U. S. 828, to review a judgment of the Supreme Court of Ohio denying a writ of prohibition, which was sought by the petitioner for the purpose of restraining a proceeding for divorce and alimony in the Court of Common Pleas.

Messrs. Atlee Pomerene and *Malcolm Y. Yost,* with whom *Mr. Frank Harrison* was on the brief, for petitioner.

Congress has taken jurisdiction of "all" cases of this kind from the state courts. The Act does not say that it takes from the state courts jurisdiction of all cases except those of divorce and alimony. If it had been so intended, Congress would have said so.

The Supreme Court of Ohio has ignored the plain rule that a statute cannot be amended or extended by judicial construction.

Congress having determined that the jurisdiction of the courts of the United States shall be exclusive of the courts of the several States in all suits and proceedings against vice-consuls, surely this Court will not hold such determination and statute absurd. The reasons which prompted the framers of the Constitution to extend the judicial power of the United States to all cases affecting ambassadors and consuls, and which prompted the Congress to make the jurisdiction of the courts of the United States in such cases exclusive of the courts of the several States, apply to divorce proceedings against diplomatic and consular representatives just as much as to other suits and proceedings against them. The United States has exclusive responsibility for international relations. A vice-consul is a representative of a sovereign of equal dignity with the United States. The foreign sovereign thus represented may have peculiar laws relative to domestic relations. No state court should have the power to draw the United States into complications with a foreign sovereign; and such complications might result from a divorce proceeding just as readily as from any other kind of a suit or proceeding.

This Court long ago decided that consular representatives are exempt from all suits and proceedings in the state courts. *Davis* v. *Packard,* 7 Pet. 276. The decision in that case was under an earlier form of this same statute

which only differs from the present one in that it excepts a few specific criminal matters. It is said in the opinion of this Court in that case: (p. 280) "As an abstract question it is difficult to understand on what ground a state court can claim jurisdiction of civil suits against foreign consuls." (p. 285) "The Act of Congress is general, extending to all suits against consuls." The Court held that the privilege and immunity is not personal to the consul, but is a privilege of the Government which he represents. The Court of Appeals of New York in the *Valario* case held it is also a privilege of the Government of the United States. It is a privilege which he cannot waive.

The question has been decided by the courts of New York and Pennsylvania contrary to the opinion in this cause. *Higginson* v. *Higginson,* 158 N. Y. Supp. 92; *Valario* v. *Thompson,* 7 N. Y. 576; *Mannhardt* v. *Soderstrom,* 4 Binney 138. See also *Sagory* v. *Wissman,* Fed. Cas. No. 12227; *Griffin* v. *Domingues,* 9 N. Y. 656; *Sartori* v. *Hamilton,* 13 N. J. L. 107; 1 Op. Atty. Gen. 406.

If the decision below is correct, a foreign consul can not be sued for divorce and alimony in the state courts of New York and Pennsylvania, but can be sued in the state courts of Ohio,—an intolerable situation in view of the specific legislation of Congress.

This Court has held in the cases cited in the opinion of the court below that federal courts have no jurisdiction of suits or proceedings for divorce and alimony between persons of whom the state courts have jurisdiction; but so far as we have been able to find, it has never held that the federal courts have no jurisdiction of such suits or proceedings against diplomatic and consular representatives of foreign sovereigns.

The court below attached some weight to the fact that the marital contract was with an American woman and consummated in Ohio.

Since the decisions in *Davis* v. *Packard,* 7 Pet. 276, and *Plaquemines Tropical Fruit Co.* v. *Henderson,* 170 U. S. 511, the power of Congress to exclude the courts of the several States from jurisdiction of such cases can not be doubted. The power is unlimited and not qualified by any condition that the federal courts afford a forum.

Mr. Harry Nusbaum, with whom *Mr. Henry W. Harter, Jr.,* was on the brief, for respondents.

MR. JUSTICE HOLMES delivered the opinion of the Court.

The relator was sued for divorce and alimony in a Court of the State of Ohio. He objected to the jurisdiction of the Court, but the objection was overruled and an order for temporary alimony was made. He thereupon applied to the Supreme Court of the State for a writ of prohibition, but upon demurrer to the petition the writ was denied. 119 Ohio State, 484. A writ of certiorari was granted by this Court.

The facts alleged are that the relator is Vice-Consul of Roumania and a citizen of that country, stationed and now residing at Cleveland, Ohio, and it is said by the Supreme Court to have been conceded at the argument that he was married to Helen Popovici, the plaintiff in the original suit, in Stark County, Ohio, where she resided. The relator invokes Article III, Section 2, of the Constitution: "The Judicial Power shall extend . . . to all Cases affecting Ambassadors, other public Ministers and Consuls." "In all Cases affecting Ambassadors, other public Ministers and Consuls . . . the supreme Court shall have original jurisdiction"; and also the Judicial Code, (Act of March 3, 1911, c. 231) § 256, "The jurisdiction vested in the courts of the United States in the cases and proceedings hereinafter mentioned, shall be exclusive of the courts of the several States, . . .

Eighth. Of all suits and proceedings against ambassadors, or other public ministers, or their domestics, or domestic servants, or against consuls or vice-consuls." To this may be added § 24 giving to the District Court original jurisdiction " Eighteenth. Of all suits against consuls and vice-consuls "; the Supreme Court, by § 233, being given " exclusively all such jurisdiction of suits and proceedings against ambassadors or other public ministers, or their domestics or domestic servants, as a court of law can have consistently with the law of nations."

The language so far as it affects the present case is pretty sweeping but like all language it has to be interpreted in the light of the tacit assumptions upon which it is reasonable to suppose that the language was used. It has been understood that, " the whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the States and not to the laws of the United States," *Ex parte Burrus,* 136 U. S. 586, 593, 594, and the jurisdiction of the Courts of the United States over divorces and alimony always has been denied. *Barber* v. *Barber,* 21 How. 582. *Simms* v. *Simms,* 175 U. S. 162, 167. *De La Rama* v. *De La Rama,* 201 U. S. 303, 307. A suit for divorce between the present parties brought in the District Court of the United States was dismissed. *Popovici* v. *Popovici,* 30 Fed. (2d) 185.

The words quoted from the Constitution do not of themselves and without more exclude the jurisdiction of the State. *Plaquemines Tropical Fruit Co.* v. *Henderson,* 170 U. S. 511. The statutes do not purport to exclude the State Courts from jurisdiction except where they grant it to Courts of the United States. Therefore they do not affect the present case if it be true as has been unquestioned for three-quarters of a century that the Courts of the United States have no jurisdiction over divorce. If when the Constitution was adopted the common understanding

was that the domestic relations of husband and wife and parent and child were matters reserved to the States, there is no difficulty in construing the instrument accordingly and not much in dealing with the statutes. 'Suits against consuls and vice-consuls' must be taken to refer to ordinary civil proceedings and not to include what formerly would have belonged to the ecclesiastical Courts.

It is true that there may be objections of policy to one of our States intermeddling with the domestic relations of an official and subject of a foreign power that conceivably might regard jurisdiction as determined by nationality and not by domicil. But on the other hand if, as seems likely, the wife was an American citizen, probably she remained one notwithstanding her marriage. Act of September 22, 1922, c. 411, § 3; 42 Stat. 1021, 1022. Her position certainly is not less to be considered than her husband's, and at all events these considerations are not for us.

In the absence of any prohibition in the Constitution or laws of the United States it is for the State to decide how far it will go.

Judgment affirmed.

CLARKE, COLLECTOR OF INTERNAL REVENUE, *v.* HABERLE CRYSTAL SPRINGS BREWING COMPANY.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

No. 68. Argued January 9, 1930.—Decided January 27, 1930.

1. Under § 234 (a) (7) of the Revenue Act of 1918, which provides that in computing the net income of corporations there shall be allowed as a deduction "a reasonable allowance for the exhaustion, wear and tear of property used in the trade or business, including a reasonable allowance for obsolescence," a brewing company is not entitled to a deduction for the fiscal year ending May 31, 1919,